

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN RE:	)	Chapter 11
	)	
EAT FIT GO HEALTHY FOODS, LLC et al,	)	Case No. BK18-81127
	)	
Debtor.	)	
_____	)	

**MOTION OF THE UNITED STATES TRUSTEE TO  
CONVERT CASES TO CHAPTER 7**

COMES NOW the United States Trustee for the District of Nebraska and hereby moves the Court to enter an order converting the each of the jointly administered cases to Chapter 7. In support of this Motion, the United States Trustee respectfully states as follows:

1. On July 31, 2018, the debtors filed voluntary Chapter 11 petitions. On August 3, 2018, the Court entered an Order jointly administering these cases.

2. On January 15, 2019, the debtors filed a Motion to Approve the Sale of Substantially All Assets. An order granting the Motion to Approve the Sale of Substantially All Assets was entered by the Court on February 28, 2019. Upon information and belief, none of the jointly administered debtors currently have any business operations.

3. The debtors have failed to pay all quarterly fees due to the United States Trustee as required by 28 U.S.C. § 1930(a)(6). Quarterly fees are past due in the following amounts:

<sup>1</sup> Debtors in this case include: Eat Fit Go Omaha Kitchen, LLC, Eat Fit Go Kansas City Kitchen, LLC, Eat Fit Go Georgia Kitchen, LLC, Eat Fit Go Arizona Kitchen, LLC, Eat Fit Go Healthy Foods - Des Moines, LLC, Eat Fit Go Healthy Foods - Kansas City, LLC, EFG Shared Services, LLC (No Rev), Eat Fit Go Healthy Foods - Omaha, LLC, and Eat Fit Go Healthy Foods - Minnesota, LLC

18-81121	EAT FIT GO ARIZONA KITCHEN, LL	2,600.00
18-81122	EAT FIT GO GEORGIA KITCHEN, LL	2,600.00
18-81123	EAT FIT GO HEALTHY FOODS - DES	1,950.00
18-81124	EAT FIT GO HEALTHY FOODS - KAN	12,350.00
18-81125	EAT FIT GO HEALTHY FOODS - MIN	1,950.00
18-81126	EAT FIT GO HEALTHY FOODS - OMA	11,375.00
18-81127	EAT FIT GO HEALTHY FOODS, LLC	7,150.00
18-81128	EAT FIT GO KANSAS CITY KITCHEN	1,950.00
18-81129	EAT FIT GO OMAHA KITCHEN, LLC	16,848.00
18-81130	EFG SHARED SERVICES, LLC	12,654.05

Total amount due for all cases: \$71,427.05

4. If the cases are converted to Chapter 7, a quarterly fee for the second quarter of 2020 will also be due in each case.

5. 11 U.S.C§1112(b) provides:

“(b)(1) Except as provided in paragraph (2) of this subsection, subsection 8 of this section, and section 1104(a)(3), on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

(4) For purposes of this subsection, the term 'cause' includes—

(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

(B) gross mismanagement of the estate;

(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

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(D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;

(E) failure to comply with an order of the court;

(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

(G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;

(H) failure to timely provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);

(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;

(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

(K) failure to pay any fees or charges required under chapter 123 of title 28;

(L) revocation of an order of confirmation under section 1144;

(M) inability to effectuate substantial consummation of a confirmed plan;

(N) material default by the debtor with respect to a confirmed plan;

(O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

(P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

6. The examples set forth in section 1112(b)(4) are not exhaustive and the

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Court may consider other factors in using its equitable powers to reach an appropriate result in individual cases. *In re Ameribuild Construction Management, Inc.*, 399 B.R. 129 (Bankr. S.D. N.Y. 2009). If cause is shown to dismiss or convert a case, the case must be converted or dismissed, absent unusual circumstances that are set forth in 11 U.S.C. §1112(b)(2). *In re Incredible Auto Sales, LLC*, 2007 WL 1100276 (Bankr. D. Mont. 2007).

7. The failure to pay quarterly fees to the United States Trustee is cause for conversion of the cases to Chapter 7. 11 U.S.C. §1112(b)(4)(K).

8. The debtors have no reasonable likelihood of rehabilitation. Substantially all of the assets of the debtors have been sold and the debtors have no current business operations. The Court should convert these cases to chapter 7 since the debtors have no reasonable probability of emerging from the bankruptcy proceeding and no realistic chance of reorganizing. *In re Ameribuild Construction Management, Inc.*, 399 B.R. 129 (Bankr. S.D. N.Y. 2009).

9. It is in the best interests of the creditors and the estate for these cases to be converted to Chapter 7 so that a trustee may be appointed to distribute any remaining funds held by the debtors in accordance with the priorities of the Bankruptcy Code and investigate any further potential causes of action that could be recovered for the benefit of creditors.

WHEREFORE, the United States Trustee respectfully requests the Court to enter an order converting each of the jointly administered cases to Chapter 7.

<sup>1</sup> Debtors in this case include: Eat Fit Go Omaha Kitchen, LLC, Eat Fit Go Kansas City Kitchen, LLC, Eat Fit Go Georgia Kitchen, LLC, Eat Fit Go Arizona Kitchen, LLC, Eat Fit Go Healthy Foods - Des Moines, LLC, Eat Fit Go Healthy Foods - Kansas City, LLC, EFG Shared Services, LLC (No Rev), Eat Fit Go Healthy Foods - Omaha, LLC, and Eat Fit Go Healthy Foods - Minnesota, LLC

DATED this 29<sup>th</sup> day of May, 2020.

Respectfully Submitted:

Daniel J. Casamatta  
Acting United States Trustee

BY: /s/ Jerry L. Jensen  
Jerry L. Jensen  
Assistant U.S. Trustee  
Office of the United States Trustee  
U.S. Department of Justice  
Roman L. Hruska U.S. Courthouse  
111 South 18<sup>th</sup> Plaza, Suite 1148  
Omaha, Nebraska 68102  
(402) 221-4302

### **CERTIFICATE OF SERVICE**

I hereby certify that I filed the above and foregoing with the Clerk of Bankruptcy Court on May 29, 2020 using the CM/ECF system which sent notification to all CM/ECF participants. A copy was mailed to the Debtor at the following address:

Eat Fit Go Healthy Foods, LLC  
8877 S. 137<sup>th</sup> Cir, Suite 1  
Omaha, NE 68138

/s/ Jerry L. Jensen

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